

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WP(C).No. 926 of 2007(I)

PETITIONER:

KAMALAKSHAN K.,
PEON, VILLAGE OFFICE, KANNUR,
KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
KANNUR.

BY GOVT.PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 926 of 2007

Dated this the 12th day of January, 2007

JUDGMENT

The challenge is to Exts.P8 and P9 orders passed by the second and first respondents respectively. The facts are that the petitioner was selected for appointment to the post of Police Constable and he had undergone training. The pay scale of a police constable at the relevant time was Rs.3050-5230. While so, he was selected for appointment as Peon in the Revenue department and accepting the order of appointment issued to him, he reported for duty on 19.7.1999. The pay scale of peon at the relevant time was Rs.2610-3680. While the petitioner was drawing pay and allowances in the pay scale of peon, revised from time to time, he raised a claim that he is eligible to get the benefit of Rule 37(b) of Part I Kerala Services Rules which reads as follows:

“In the case of officiating appointments other than those contemplated in the above rule, the officers officiating pay in the new appointment shall be fixed at his officiating pay in the previous appointment if it is a stage in the new scale or at the next lower stage, if it is not a stage in the new scale,

the difference being treated as personal pay to be absorbed in future increases.

This will not apply to cases of reversions:

Provided that in cases covered by sub rules (a) and (b) other than cases of re-employment after resignation, removal or dismissal from public service, if he has previously either held substantively or officiated in (1) the same post, or (ii) permanent or temporary post on the same time scale or (iii) a permanent post on an identical time scale or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time scale, then the initial pay shall not, except in cases of reversion to the parent cadre governed by item(iii) above, be less than the pay which he drew on the last such occasion and he shall count the period during which he drew that pay on such last and any previous occasions for increment in the stage of the time scale equivalent to that pay. The service rendered in a post referred to in item (iii) shall, on reversion to the parent cadre, count towards initial fixation of pay to the extent and subject to the conditions indicated below:

a) the officer should have been approved for appointment to the particular grade/post in which the previous service is to be counted.

b) all his seniors, except those regarded as

unfit for such appointment, were serving in posts carrying the scale of pay in which the benefit is to be allowed or in higher posts, whether in the department itself or elsewhere, and at least one junior was holding a post in the department carrying the scale of pay in which the benefit is to be allowed; and

c) the service will count from the date his junior is promoted and the benefit will be limited to the period the officer would have held the post in his parent cadre had he not been appointed to the ex-cadre post."

2. The request made by the petitioner has been turned down by the impugned orders. The reasons stated for the rejection of the request of the petitioner is that the petitioner was drawing only a stipend during the period of training as police constable, and therefore, Rule 37(b) has no application to the facts of the case.

3. Heard the counsel for the petitioner.

4. I find no valid reason to hold that the view taken by the Government in Ext.P9 is against law. Rule 37(b) will have application only in a case where the Government employee had drawn or is drawing pay in a time scale of pay and subsequently getting appointed in another post having a higher scale of pay. In this case, the petitioner did not get the opportunity to draw pay in the time scale of

pay of police constable. He got appointment as peon while he was getting only a stipend as a Constable undergoing training.

The writ petition fails. Dismissed.

K.K.DENESAN, JUDGE

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